

**REDACTED VERSION OF
PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO COMPEL**

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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN JOSE DIVISION

22 IN RE: HIGH-TECH EMPLOYEE
23 ANTITRUST LITIGATION

24 THIS DOCUMENT RELATES TO:
25 ALL ACTIONS

26 Master Docket No. 11-CV-2509-LHK

27 **PLAINTIFFS' REPLY IN SUPPORT OF**
28 **MOTION TO COMPEL**

[FILED UNDER SEAL]

Defendants have no legitimate reason to continue hiding [REDACTED] from Plaintiffs and the Court. The Court should grant Plaintiffs' Motion to Compel (Dkt. 789-2).¹

I. GOOD CAUSE EXISTS TO ORDER PRODUCTION OF [REDACTED]

The Non-Settling Defendants concede [REDACTED] until after the end of fact discovery—indeed after the individual settlements with Intuit, Lucasfilm, and Pixar—and admit that Plaintiffs diligently alerted the Court to the issue after learning of it. Defendants suggest no prejudice they would suffer by producing this single document that is readily available to them, nor could they. Plaintiffs satisfy the “good cause” standard of Rule 16(b)(4).

Instead, Defendants assert they are “under no obligation to produce documents created after December 30, 2011,” citing only to the transcript of the April 18, 2012 Case Management Conference. (Opp’n at 1.) They are wrong. The discussion to which they cite concerned the parameters for collecting and searching Electronically Stored Information (“ESI,” such as emails) from certain relevant custodians, to *find* relevant documents. At no time did Plaintiffs agree that Defendants could withhold a document they know to be relevant simply because the document was created after December 30, 2011. To the contrary, Plaintiffs made clear that a date cutoff for ESI *collection* could not be used as a means to withhold relevant evidence of which Defendants are already aware. *See, e.g.*, Dec. 4, 2011 J. CMC Statement, at 4 n.2 (Dkt. 115) (“In any case, Defendants should not withhold responsive documents they find based on a time period cut-off.”).

II. [REDACTED]

Defendants attempt to [REDACTED] (Opp’n at 4-5). But Plaintiffs and the Court cannot assess these arguments without reviewing it, as Defendants’ own cases confirm. (*Id.* at 5 n.6: “[REDACTED]”). [REDACTED] should be produced, and

¹ Plaintiffs have filed this brief under seal pursuant to the Court’s March 24, 2014 Order (Dkt. 768 at 2). As explained in the accompanying Administrative Motion to Unseal, Plaintiffs respectfully request that the Court revisit its Order and file all associated briefing and exhibits in the public record. This issue should not be kept from the Class and the public.

1 then Plaintiffs (and ultimately the Court) may make an informed decision as to [REDACTED].

2 Similarly, the Court and Plaintiffs cannot evaluate the relevance or admissibility of the
3 document without seeing it. According to Defendants, [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]” (Opp’n at 4.) However, this argument assumes that [REDACTED]
7 [REDACTED]. But if Plaintiffs [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED].
12 For instance, [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED].

21 In addition, [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
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[REDACTED]

[REDACTED].

Perhaps Defendants ignore the possibility of [REDACTED]

[REDACTED]. They may be right. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].²

Finally, Defendants unfairly assert that “Plaintiffs have made no showing that [REDACTED]

[REDACTED]” (Opp’n at 5.) But that showing could depend in part

on [REDACTED], which Defendants refuse to disclose. Further, as Defendants know,

Plaintiffs’ knowledge of [REDACTED] derives from

settlement communications. Given that Defendants have put these at issue, Plaintiffs’ counsel

requested permission to disclose proof that [REDACTED]

[REDACTED]. Counsel for the relevant Defendant(s) withheld that permission.

III. CONCLUSION

The Court should grant Plaintiffs’ Motion and order Defendants to produce [REDACTED].

² See generally [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 Dated: September 19, 2014

Respectfully submitted,

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3
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